

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re )  
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 GUAM CELLULAR AND PAGING, INC. )  
 )  
 Petition for Waiver of FCC Rule )  
 Section 52.15(g)(3)(i)(A) )

CC Docket No. 99-200

To: Wireline Competition Bureau

**PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED**

Guam Cellular and Paging, Inc. ("Guam Cellular" or "Petitioner"), by counsel and pursuant to Section 1.925 of the Commission's Rules, 47 C.F.R. §1.925, hereby requests a waiver of Section 52.15(g)(3)(i)(A), 47 C.F.R. §52.15(g)(3)(i)(A), and the Industry Numbering Committee's ("INC") six-months-to-exhaust criteria for central office code assignment.<sup>1</sup> Specifically, Petitioner requests the Commission to waive the requirement that Guam Cellular demonstrate it meets the six-months-to-exhaust evaluation criteria as part of its application for a new central office code in Guam. On September 21, 2001, Guam Cellular filed a similar waiver request. That waiver was granted on November 8, 2001. As a condition of the grant, Guam Cellular agreed to migrate subscribers off of the 721 NXX assigned for its paging operations. By this Petition, Guam Cellular requests one growth code in the 671 Numbering Plan Area ("NPA"), or in the alternative, that Guam Cellular be allowed to retain the 721 NXX after all paging customers have been migrated off, so that it can be converted to use with Guam Cellular's cellular operations. In order to receive expedited relief from

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<sup>1</sup> *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, August 10, 2001, §4.2.1.

its impending exhaustion of numbering resources, Guam Cellular respectfully requests that the Commission direct the North American Numbering Plan Administrator (“NANPA”) to assign to Guam Cellular the requested growth code by July 1, 2003, or allow Guam Cellular to retain the 721 NXX. In support of this Petition, the following is respectfully shown:

## **I. BACKGROUND**

Guam Cellular is a commercial mobile radio service provider (“CMRS”), licensed to provide cellular telecommunications and paging service in Guam and the Northern Mariana Islands on call signs KNKN828 and KNKQ367. Based on its internal projections, Guam Cellular will run out of numbers to assign to its cellular customers by the end of June of 2003. Based on conversations with NANPA representatives, Petitioner understands that it does not qualify for additional numbers under the INC six-months-to-exhaust evaluation criteria.

FCC Rule Section 52.15(g)(3)(i)(A) requires carriers submitting requests for growth numbering resources to submit a Months to Exhaust worksheet. Under the Central Office Code Assignment Guidelines implemented by the INC, a new central office code assignment will not be made unless the carrier shows that its numbering resources will be exhausted within the next six months.<sup>2</sup> INC’s guidelines were originally developed at the direction of the FCC, and FCC rules require the NANPA to perform its numbering administration functions in accordance with the guidelines.<sup>3</sup> Accordingly, the FCC has jurisdiction over this matter. Further, under FCC Rule

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<sup>2</sup>*See Id.*

<sup>3</sup> CO Code Guidelines at §1.0 n.1; In pertinent part, 47 CFR §52.13(d) states, “The NANPA . . . shall administer numbering resources in an efficient and non-discriminatory manner, in accordance with Commission rules and regulations and the guidelines developed by the INC and other industry groups pertaining to the administration and assignment of numbering resources. . . .”

Section 52.15(g)(3)(iv), a carrier whose application for a central office code is refused by NANPA may challenge the decision to the appropriate state regulatory commission. According to NANPA, the Public Utilities Commission of Guam does not oversee numbering resource matters. Therefore, this Petition for Waiver is appropriately before this Commission.

Guam Cellular has a total of seven NPA-NXXs assigned to it for wireless operations in Guam. Of these seven codes, four are available for use by its cellular operations and three are available for use by its paging operations only. Guam Cellular's paging and cellular services use a separate switch and terminal with two separate signaling protocols. Therefore, Guam Cellular cannot reassign numbers allocated for paging to its cellular customers until all paging operations have ceased on the NXX. As shown below, Guam Cellular's three paging NXXs are still substantially used and cannot be cleared for use by cellular subscribers. In response to Guam Cellular's request for assignment of a new NPA-NXX, NANPA has advised that numbers assigned for paging operations must be considered even though they cannot currently be utilized for Guam Cellular's cellular operations. When all seven codes are considered, Guam Cellular meets the FCC's 60% utilization criteria set forth in 47 C.F.R. §52.15(h) but does not meet INC's six-months-to-exhaust requirement.

This is similar to the situation Guamcell found itself in September 1, 2001 when it issued its initial request for waiver of the six-months to exhaust requirement. When that waiver request was granted in November 2001, the FCC conditioned the grant by requesting that Guamcell migrate numbers off of one of its paging NXXs and eventually return that NXX to NANPA. Guamcell agreed to this condition.<sup>4</sup>

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<sup>4</sup> Letter from David A. LaFuria and Allison M. Jones, Counsel for Guam Cellular &

Pursuant to the condition it agreed to as part of its original waiver request, Guamcell has been migrating numbers from its 721 NXX. Guamcell now has 1,985 subscribers on that NXX compared to 4,500 subscribers at the time its waiver was granted. Guamcell agreed to migrate all remaining subscribers to another NXX when that number dipped below 1,500 and then return the NXX to NANPA. Guamcell has put no new subscribers on 721 and will comply with its earlier commitment to return the 721 NXX. In the meantime, Guamcell's cellular operations continue to grow and it once again faces a shortage of numbers for its cellular subscribers.

## **II. ARGUMENT**

Based on its internal calculations, Petitioner will run out of cellular numbers on or about August 1, 2003. However, the Months to Exhaust Worksheet Petitioner must submit to NANPA as part of the application process does not accurately reflect this fact. This is because Guam Cellular's cellular and paging numbers must be grouped together on the Months to Exhaust Worksheet.

A Months To Exhaust Worksheet is attached hereto as Exhibit A. This worksheet shows a breakdown of the data for just the cellular codes and the data for the cellular and paging codes combined. As shown on the Worksheet at line A, although only 2,263 cellular numbers are actually available for assignment, when combined with the paging numbers it appears that 18,811 total numbers are available. 16,548 of these numbers are paging numbers and, as explained above, cannot to be used for cellular operations because Petitioner's cellular and paging operations are separate systems.

In order to determine the months to exhaust, NANPA looks at the total of all numbers available for assignment and divides that number by the average monthly forecast. If such a

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Paging, Inc. to Tanya Cho dated October 25, 2001.

calculation is performed for Guam Cellular's cellular numbers only, Guam Cellular meets the six-months-to-exhaust criterion because it will exhaust its numbers in 4.5 months from the date that the report was prepared in April 2003. *See* line E. However, when cellular and paging numbers are grouped together, the calculation indicates that there are 37.2 months to exhaust. Accordingly, Guam Cellular asks for a waiver of the Months to Exhaust showing in order that Guam Cellular may be assigned an additional NPA-NXX for its cellular operations in Guam, or in the alternative, a waiver to release Guam Cellular from its earlier agreed upon condition to return the 721 NXX after customers have been migrated off.

Waiver of the Commission's rules is appropriate where a party demonstrates that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925(b)(3). The Commission also has discretion to waive its rules in cases where special circumstances warrant a deviation from the general rule and where such deviation serves the public interest or where there is good cause to do so.<sup>5</sup>

The underlying purpose of the rule would not be served by its application in the instant case. The Commission's numbering resource rules are intended, in part, to prevent the building up or stockpiling of numbers by carriers.<sup>6</sup> The rules are used to verify a carrier's need for growth

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<sup>5</sup>*Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). 47 C.F.R. §1.3.

<sup>6</sup>*Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (March 2000), 7615-6.

numbering resources.<sup>7</sup> Guam Cellular has the requisite need. Its cellular business is growing quickly and it is unable to use available paging numbers to meet the demand for cellular service due to unavoidable technological reasons.

“Carriers that cannot meet the requirements for receiving growth numbering resources, but can demonstrate an actual need for additional numbering resources, may seek a waiver of [the Commission’s] rules.”<sup>8</sup> As explained herein, Guam Cellular has a genuine need for additional numbering resources in order to continue providing cellular service to consumers in Guam.

Another purpose of the Commission’s rules on numbering resources is to conserve numbers in regions where numbers are likely to become scarce. However, Guam is not facing any numbering resource problems. Guam is a rural service area with a low population density. The NPA in Guam is not in jeopardy. Furthermore, in requesting this waiver Guam Cellular is striving for better utilization of its current number resources.

Grant of this waiver is in the public interest. First and foremost, Guam Cellular provides valuable service to the community of Guam. Wireless telephony is widely recognized to provide vital health and safety communications service to the community of Guam. For the months of March and April 2003, Guam Cellular had close to 3900 gross cellular activations. Grant of this waiver will enable Guam Cellular to provide a service that is in great demand on the island of Guam. Failure to grant the waiver would be contrary to the Commission’s holding that numbering rules should “not be applied in such a manner as to deprive customers of their choice of carriers from whom to

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<sup>7</sup>*Id.*

<sup>8</sup>*Numbering Resource Optimization, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 306, 380.

purchase service upon request.”<sup>9</sup> Further, this waiver raises substantial health and safety concerns, since many consumers obtain cellular service for health and safety reasons. No other party will be prejudiced by the grant of the waiver, but consumers in Guam will be harmed by its denial.

Failure to grant the waiver would cause significant harm to the business operations of Petitioner. The Commission has stated that one of its chief goals in carrying out its statutory mandate is, “to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace.”<sup>10</sup> Guam Cellular is a small company licensed to serve only the Guam and Northern Mariana Islands RSAs. While Guam Cellular provides both cellular and paging services, cellular is by far more critical to the success of Guam Cellular’s business. Guam Cellular is currently experiencing little to no growth in its paging activations, while its cellular activations continue to grow steadily. Without new numbers, Guam Cellular will not be able to activate additional units on its cellular network unless or until other cellular units are deactivated. Such a result would be extreme and inequitable.

The technological barrier which precludes Guam Cellular from using paging numbers for cellular service is as follows: Petitioner’s cellular and paging services operate on separate networks. Guam Cellular’s cellular network uses a Motorola switch. Calls are handled on two-way trunks using SS7 Common Channel Signaling protocol. Guam Cellular’s paging system uses a Glenayre terminal. Calls are handled on in-bound trunks using the Wink Start, Multi-Frequency Signaling

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<sup>9</sup>*In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, Order*, 14 FCC Rcd 17467, 17469.

<sup>10</sup>*Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (March 2000).

protocol. Due to the separate and distinct nature of these two systems, the administrative burden of re-routing paging numbers to cellular subscribers would be extreme and unreasonable for both Guam Cellular and the local exchange carrier, Guam Telephone Authority ("GTA"). GTA, which provides the trunks for Guam Cellular's cellular network, would have to take numbers currently programmed to operate on Guam Cellular's paging system and re-route them to function on Guam Cellular's cellular network. The work associated with this action, also referred to as number translation, would be extraordinary due to the fact that the amount of contiguous numbers Guam Cellular has available is very limited. Out of the 30,000 numbers allocated for paging, the largest contiguous block is sixty-nine numbers. This means that GTA would have to take the group of sixty-nine numbers (or less in most cases) and complete the number translation process just for that group and continue the same process until it is completed for all 30,000 numbers. The process would be exceedingly time consuming and expensive and would have no concomitant public benefit because the NPA in Guam is not in jeopardy.

Grant of this waiver request would be consistent with the Commission's action in other proceedings. For example, the Commission ordered NANPA to release additional codes to American Cellular Corporation ahead of schedule when it demonstrated it would be without numbers to provide service to new customers within the 66-day period required to activate a central office code.<sup>11</sup> Similarly, the Commission concurred with the New York State Department of Public Service in holding that Sprint PCS adequately demonstrated a genuine and immediate need for

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<sup>11</sup>Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administrator, dated April 7, 1999 (DA 99-663).



numbering resources in advance of the assignment schedule for the 516 NPA rationing plan.<sup>12</sup> In another case, the Commission ordered NANPA to release initial central office codes to AT&T Wireless ahead of the normal assignment schedule when the carrier was threatened with being unable to timely commence service to customers.<sup>13</sup> Further, the Commission has held that where carriers cannot serve customers because they do not have numbers, or where carriers are forced to use extraordinary and unreasonably costly measures to obtain numbers in order to provide service before implementation of new area codes, a state should work with the code administrator to ensure that those carriers have access to NXXs outside of the parameters of the rationing plan.<sup>14</sup> Accordingly, the Commission has repeatedly recognized that where a carrier faces numbering exhaust concerns which threaten its ability to provide service, exceptions to the growth resource requirements and normal resource allocation plan may be warranted. As explained herein, Guam Cellular is facing the imminent exhaust of its cellular numbering resources and requires immediate relief.

### **III. EXPEDITED ACTION IS NEEDED**

Guam Cellular seeks expedited action because it will run out of numbers for new activations at the beginning of July, in approximately ten weeks. The need for expedited action is due to

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<sup>12</sup>Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administrator, dated March 12, 1999 (DA 99-505).

<sup>13</sup>Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administrator, dated June 6, 2000 (DA 00-1247).

<sup>14</sup>*See Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 19009, 19039 (1998).


circumstances beyond its control. Guam Cellular has been working with NANPA since July 2001 to obtain additional numbers. Based on recommendations of NANPA staff, on August 21, 2001, Guam Cellular applied for and obtained a new Operating Company Number ("OCN") and subsequently applied for additional numbers using that OCN. More recently, NANPA unexpectedly advised Guam Cellular it will be unable to receive additional codes under its new OCN, and directed Guam Cellular to request a waiver from the FCC. Guam Cellular has filed its original Petition at the earliest possible date pursuant to NANPA's most recent recommendation. Now, despite considerable efforts to migrate paging customers off of its 721 NXX per the original waiver grant, Guamcell's paging customer base has not dissipated with the speed that Guamcell had anticipated. Therefore, Guamcell is faced with the need for additional relief.

**V. CONCLUSION**

For the reasons set forth above, Petitioner respectfully requests the Commission to waive the requirement that Guam Cellular demonstrate it meets the six-months-to-exhaust criteria as part of its application for a new central office code in Guam, and Petitioner respectfully requests that the Commission direct NANPA to assign to Guam Cellular the requested codes by July 1, 2003; or in the alternative, Guam Cellular requests that the condition placed on the grant of previous relief to Guam Cellular be removed, such that Guam Cellular can retain its 721 NXX and convert that NXX to its cellular operations.

Respectfully submitted,

**Guam Cellular and Paging, Inc.**

By 

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June 2, 2003

## CO CODE ASSIGNMENT

**MONTHS TO EXHAUST CERTIFICATION WORKSHEET - TN Level<sup>1</sup>**  
 (Worksheet to be used for Requests for Additional Codes for Growth)

Date: 5/27/03 Company Name: Guam Cellular and PagingRate Center: AganaNPA(s)-NXXs included in growth calculation<sup>2</sup>: 671-686, 671-687, 671-688, 671-689, + 671-476, 671-720, 671-721

Signature of Authorized Representative of Code Applicant: \_\_\_\_\_

Title: \_\_\_\_\_ Telephone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

A. Telephone Numbers (TNs) Available for Assignment (See Glossary<sup>3</sup>): 2,263 / 18,811

	Month #1	Month #2	Month #3	Month #4	Month #5	Month #6	Month #7	Month #8	Month #9	Month #10	Month #11	Month #12
B. Previous 6-month growth history <sup>4</sup>	833	367	1795	149	-121	76						
C. Forecast - Next months 1-12 <sup>5</sup>	<u>400</u>	<u>400</u>	<u>400</u>	<u>1000</u>	<u>400</u>	<u>400</u>						
D. Average Monthly Forecast (Sum of months 1-6 Part C above divided by 6):	<u>500</u>											

E. Months to Exhaust<sup>6</sup> = 
$$\frac{\text{Telephone Numbers (TNs) Available for Assignment (A)}}{\text{Total with Paging NXX's}} = \frac{2,263 / 500}{18,811 / 500}$$

Average Monthly Forecast (D)

4.5 mo 37.2 mo

F. Utilization Level<sup>7</sup> = 
$$\frac{\text{Telephone Numbers (TNs) Assigned}}{\text{Total Numbering Resources in Applicant's Inventory}} \times 100 = \underline{93.7\% \quad 73.1\%}$$

Explanation: \_\_\_\_\_

<sup>1</sup> A copy of this worksheet is required to be submitted to the Code Administrator; for audit purposes, it must be in the applicant's files.

<sup>2</sup> Report on all resources for the requested geographic area, including newly acquired codes.

<sup>3</sup> Definitions of terms may be found in the Glossary section of the Central Office Code (NXX) Assignment Guidelines.

<sup>4</sup> Net change in TNs no longer available for assignment in each previous month, starting with the most distant month as Month #1, and Month #6 as the current month.

<sup>5</sup> Forecast of TNs needed in each following month, starting with the most recent month as Month #1.

<sup>6</sup> To be assigned an additional CO Code (NXX) for growth, "Months to Exhaust" must be less than or equal to 6 months. (FCC 00-104, § 52.15 (g) (3) (iii)).

<sup>7</sup> Newly acquired numbers (see glossary) may be excluded from the utilization calculation (FCC 00-104, § 52.15 (g) (3) (ii)).